

ORDER SHEET
OD-8,9,10 & 58

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

IA NO. GA 3 OF 2021
IN
CS 89 OF 2021
IN THE MATTER OF:
SURENDRA SINGH BENGANI
VS
GYAN NIDHI TRUST AND ORS.

IA NO. GA 4 OF 2021
IN
CS 89 OF 2021
IN THE MATTER OF:
SURENDRA SINGH BENGANI
VS
GYAN NIDHI TRUST AND ORS.

IA NO. GA 5 OF 2023
IN
CS 89 OF 2021
IN THE MATTER OF:
SURENDRA SINGH BENGANI
VS
GYAN NIDHI TRUST AND ORS.

IA NO. GA 1 OF 2021
IN
CS 89 OF 2021
IN THE MATTER OF:
SURENDRA SINGH BENGANI
VS
GYAN NIDHI TRUST AND ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 19th September, 2023.

Appearance:
Mr. Rohit Basnerjee, Adv.
Mr. Virendra Singh Bengani, Adv.
For plaintiff
Mr. Abhrajit Mitra, Sr. Adv.
Mr. Suddhasatva Banerjee, Adv.
Ms. Radhika Singh, Adv.
Mr. Sourojit Dasgupta, Adv.
For defendant nos. 1 & 2

The Court :- In a suit for money lent and advanced there are four applications before this Court.

The application being GA 1 of 2021 is the plaintiff's application, inter alia for injunction.

GA no.3 of 2021 is an application by the defendant no.2, inter alia, for rejection of the plaint.

GA no.4 of 2021 is an application by the defendant no.1 for rejection of the plaint.

GA no.5 of 2023 is an application by the plaintiff for amendment of the plaint.

The plaintiff and the defendant nos. 1 and 2 have agreed to a procedure for disposing of the four applications as aforesaid.

In the amendment application, apart from the proposed amendments suggested by the plaintiff, the plaintiff has sought to expunge the name of defendant no.3 who has died during the pendency of the suit and defendant no.5 who has ceased to be a trustee of the defendant no.1, Trust.

The defendant no.4 has not appeared to contest these applications.

Since the defendant no.3 was impleaded in the capacity of a trustee of the defendant no.1, no substitution of the legal heirs of the said defendant no.3 is necessary.

So far as the defendant no.5 is concerned, since he was also impleaded as a trustee on the said defendant having ceased to be a trustee no substitution is also required. The plaintiff, however, wants to implead one Jayanta Chowdhury, who according to the plaintiff, is a trustee, at the present, of the defendant no.1.

By consent of the plaintiff and the defendant nos. 1 & 2, the proposed amendments as indicated in red ink in a copy of the plaint annexed to this application and marked with Annexure-“B” are allowed save and except that Jayanta Chowdhury is added as a party defendant on the prayer of the plaintiff and not by consent of the defendant nos.1 & 2.

The plaintiff shall be at liberty to re-verify and re-affirm the plaint immediately upon the amendment being carried out. Within a fortnight from the date of re-affirmation and re-verification of the plaint an amended copy of the plaint be served on the defendant nos. 1 & 2 as also on their advocates.

Similarly, a copy of the plaint shall be served on the defendant no.4 and the added defendant, namely, Jayanta Chowdhury also within a period of fortnight from the date of re-verification and re-affirmation of the plaint.

The defendants including the added defendant are permitted to file their respective written statements within a period of 10 weeks from the date of receipt of amended copy of the plaint.

On the filing of the written statements, the parties will be at liberty to disclose their respective documents and give inspection thereof to make the suit ready for hearing.

The application being GA 5 of 2023 is accordingly, disposed of by directing the department to carry out the amendment within three weeks from date.

The applications being GA no.3 of 2021 and GA no.4 of 2021 are disposed of by consent of parties keeping the point as to the maintainability of the suit and the territorial jurisdiction of this Court to receive, try and determine the suit to be adjudicated as a preliminary if deemed fit by the trial court at the time of trial.

The application being GA 1 of 2021 is disposed of without any further order. The disposal of this application, however, will not prevent the plaintiff from filing an application for injunction at a subsequent stage, if permissible in law. Such application will be, however, subject to the point of maintainability of the suit and the territorial jurisdiction of this Court.

In view of the aforesaid, the application being GA 1 of 2021, GA 3 of 2021 and GA 4 of 2021 are, accordingly, disposed of.

(ARINDAM MUKHERJEE, J.)